

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

-----X **Docket#**
UNITED STATES OF AMERICA, : 12-cr-00134-BMC-MDG-1
:
- versus - : U.S. Courthouse
: Brooklyn, New York
ADNAN IBRAHIM HARUN A. HAUSA, :
Defendant : March 22, 2013
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TRANSCRIPT OF CRIMINAL CAUSE FOR STATUS CONFERENCE
BEFORE THE HONORABLE BRIAN M. COGAN
UNITED STATES DISTRICT JUDGE

A P P E A R A N C E S:

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1 THE CLERK: United States v. Ibrahim Harun.

2 Your appearances, counsel?

3 MR. BITKOWER: For the government, David
4 Bitkower, Shreve Ariail, Amanda Hector and Alumbar Hanai
5 (ph.)

6 Good afternoon, your Honor.

7 THE COURT: Good afternoon.

8 MS. KELLMAN: Good afternoon, your Honor.

9 Susan Kellman for Mr. Harun and I'm assisted at
10 counsel table by David Stern.

11 THE COURT: Good afternoon.

12 All right. As you know, this is not my case.
13 Judge Korman is a little under the weather and asked me
14 to cover it for him. I understand this is the initial
15 status conference. What's going on here?

16 MR. STERN: Judge, we would like to approach
17 and discuss something that pertains to this case.

18 THE COURT: Do you mean approach at sidebar?

19 MR. STERN: Yes.

20 MS. KELLMAN: Yes, your Honor, if we could.

21 THE COURT: Why does it have to be at sidebar?

22 MS. KELLMAN: Well, your Honor, at this moment
23 our client, as the Court can see, obviously is not
24 present. He is also not feeling well today and we had
25 some concerns because they relate to this health, we were

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1 hoping to be able to do it at sidebar because they are of
2 a personal nature.

3 THE COURT: Okay. So this sidebar, you're
4 proffering, is going to require disclosure of personal
5 medical information pertaining to the defendant?

6 MS. KELLMAN: Yes, your Honor.

7 THE COURT: All right. And if it does --

8 MS. KELLMAN: We prefer not to do that in open
9 court.

10 THE COURT: Right. But I also assume you're
11 going to ask me then if you disclose that information,
12 that I seal the transcript, so that it's not publicly
13 available, is that right?

14 MS. KELLMAN: Yes, your Honor. I think we can
15 get to that after we make the application. Yes.

16 THE COURT: All right. Well, I will hear your
17 application at sidebar and then I will determine whether
18 I am going to seal the sidebar after I've heard what it
19 is you had to say and I can make an assessment as to
20 whether it would be unduly prejudicial to the defendant
21 to have it disclosed. So let's have the sidebar and
22 we'll see what you have to say.

23 (Sidebar conference from 2:34 p.m. until 2:43 p.m.)

24 THE COURT: All right. Based on what I just
25 heard at sidebar, I think there are substantial questions

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1 as to the defendant's medical condition and his ability
2 to knowingly and intelligently participate in these
3 proceedings. Because his medical condition was discussed
4 in considerable detail, I think that is grounds to seal
5 the record. I find that his interest in his personal
6 privacy outweighs the qualified right of access that the
7 public has to these proceedings. So the sidebar shall
8 remain sealed, available only to the parties -- the
9 attorneys for the parties in the case.

10 Now where do the parties want to go forward? I
11 see we've been talking about a date. The date may be too
12 long. Based on what you've described to me, we would
13 hopefully know more about the defendant's medical
14 condition within thirty days and since I am finding
15 there's cause for him to be in the courtroom today, I
16 don't think we should wait any longer than the minimum
17 amount of time necessary to reassess and see if his
18 condition has improved to a point where he can be in the
19 courtroom.

20 Based on my experience and based on what you
21 told me at sidebar, I think we ought in thirty days if
22 that's the case. So I don't want to give you as long as
23 you've requested here and I think we ought to look for a
24 date at the end of April.

25 Paula, what do you have?

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1 THE CLERK: April 26th or May 3rd, either day
2 at 2:30.

3 THE COURT: How does that sound to counsel?

4 MR. BITKOWER: Either date is fine with the
5 government, your Honor.

6 MS. KELLMAN: That's fine with the defendant --
7 May 3rd would be fine.

8 THE COURT: Okay. What time, Paula?

9 THE CLERK: 2:30.

10 THE COURT: All right. Anything further?

11 MR. STERN: No.

12 MR. BITKOWER: Yes, your Honor. On the basis
13 articulated at sidebar, and as well as to permit
14 continued discussions between the government and defense
15 counsel, we would ask that the time between today and May
16 3rd be excluded from the speedy trial clock.

17 THE COURT: Yes, I will exclude time.
18 Obviously, there needs to be an evaluation of the
19 defendant's ability to participate in these proceedings.
20 I think that's grounds enough for an exclusion. I assume
21 the government is also going to be presenting discovery
22 during this period to counsel.

23 Is that right?

24 MR. BITKOWER: We began the process of
25 discovery back in October actually, your Honor, and we're

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1 going to have conversations with the defendant about how
2 to proceed further.

3 THE COURT: All right. I will exclude time
4 until the next conference. I find that the ends of
5 justice outweigh the interest of the public and the
6 defendant in the speedy trial, so that we can determine
7 the defendant's ability to proceed and that discovery can
8 be exchanged.

9 Anything else?

10 MR. BITKOWER: Not from the government, your
11 Honor.

12 MS. KELLMAN: Can I have one moment, Judge.

13 THE COURT: Yes.

14 MS. KELLMAN: No, nothing further. Thank you,
15 Judge.

16 THE COURT: All right. Thank you. We are
17 adjourned.

18 MR. BITKOWER: Thank you.

19 MS. KELLMAN: Thank you.

20 THE CLERK: All rise.

21 (Matter concluded)

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C E R T I F I C A T E

I, LINDA FERRARA, hereby certify that the foregoing transcript of the said proceedings is a true and accurate transcript from the electronic sound-recording of the proceedings reduced to typewriting in the above-entitled matter.

I FURTHER CERTIFY that I am not a relative or employee or attorney or counsel of any of the parties, nor a relative or employee of such attorney or counsel, or financially interested directly or indirectly in this action.

IN WITNESS WHEREOF, I hereunto set my hand this 2nd day of June, 2016.


Linda Ferrara

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